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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,643	04/25/2000	Shulong Li	2129A	9252

7590 02/26/2007  
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EXAMINER

SINGH, ARTI R

ART UNIT PAPER NUMBER

1771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/26/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

09/557,643

Applicant(s)

LI, SHULONG

Examiner

Ms. Arti Singh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

1. The Examiner has carefully considered Applicant's amendments and accompanying remarks dated 11/14/06. Applicant's amendments to claims 4 and 12 have been entered.

### *Response to Arguments*

2. Applicant's arguments filed 11/14/06 have been fully considered but they are not persuasive, with the rationale set forth below.

3. With regard to 112-1<sup>st</sup> rejection made in paragraph 3 of the last office action, Applicant traverses that there is support for "a uniform film" at page 11, lines 1-2 of the instant specification. The Examiner submits that this is correct and this rejection is withdrawn. However, it should be noted that this same page describes the film to be uniform as it is a pre-made film. Thus, in the application of making an airbag this would be relied upon as an intermediate step as the final product still has not been produced. Once this pre made film is applied to the fabric and the post processing steps of heat and pressure are applied this same film, it is no longer uniform- as it was prior to be applied to the fabric layer. Once heat and pressure are applied the film would become somewhat molten and seep onto and into the interstices of the fabric thereby holding the fibers in place, thus impregnating the fabric layer to a degree. There is a difference between impregnating and saturating, even a little seepage of the film into the fabric to hold the fibers in place would be considered penetrating into the fabric layer, and thus would not leave the film to be uniform. This same process happens when a coating is applied and then heat set. The coating too gets molten and penetrates the fabric, which locks the fibers in place and would prevent any air from leaking out. Additionally, a skilled artisan would not be able to tell whether a film or a coating was applied once the final airbag is provided. Thus, the rejection

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is withdrawn as the specification provides support for the phrase "uniform film", but the argument is not found to be persuasive as a film once post processed would not have the same uniformity as an unprocessed pre-made film.

4. With regard to the rejection made in paragraph 7-8 of the previous office action; Claims 1-3, 8-11 and 16-17 being rejected under 102(e)/103(a) over VEIGA et al USPN 6239046. Applicant's traversal over this rejection is that Veiga et al use an additional polysiloxane layer in addition to the polyurethane layer; and that the polyurethane layer is used to adhesively bond the filament together so that they do not comb or unravel and that the coating weight is too low to be equivalent to Applicant's film. The Examiner rebuts in that Applicant's claim language is open-ended and does not preclude the use of additional layers, with their airbag composite. Veiga et al apply the polyurethane coating and cure it prior to the application of any subsequent coating layers, and binds the fibers together to make an impermeable surface. The polysiloxane layer while ensuring that the airbag is totally impermeable is used so that the airbag as a whole will better withstand extremely high heat encountered during inflation. In another embodiment both sides of the fabric may be coated with polyurethane, which alludes to no air getting through the fabric/polyurethane laminate. With regard to the coating weight, it falls within Applicant's range, and therefore must perform the same function as Applicant's airbag. With regard to the discussion of the coating versus a film, please rely on the rationale provided in paragraph 3 above.

In rebuttal to the establishment of anticipation or prima facie case of obviousness, Applicant is picking apart the rejection. The rejection was a combination rejection of 102/103 and when a Fitzgerald/Best type of 103 rejections is applied, it is not the normal 103 rejection where a Graham V. Deere obvious determination is made. In these types of 103 rejections, the Examiner has stated that as "best we can tell, given the information available" the product of

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the prior art is the same as that set forth in the claims and that if there is any difference, it would be an obvious variation due to vagaries of processing conditions, different test methods etc. and that the difference would not be significant if not the same. The discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not render the old composition patentable new to the discoverer." *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property, which is inherently present in the prior art, does not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977). Additionally, a rejection made under 35 U.S.C. 102/103 can be made when the prior art product seems to be identical except that the prior art is silent as to an inherent characteristic, Where applicant claims a composition in terms of a function, property or characteristic and the composition of the prior art is the same as that of the claim but the function is not explicitly disclosed by the reference, the examiner may make a rejection under both 35 U.S.C. 102 and 103, expressed as a 102/ 103 rejection. "There is nothing inconsistent in concurrent rejections for obviousness under 35 U.S.C. 103 and for anticipation under 35 U.S.C. 102." *In re Best*, 562 F.2d 1252, 1255 n.4, 195 USPQ 430, 433 n.4 (CCPA 1977). This same rationale should also apply to product, apparatus, and process claims claimed in terms of function, property or characteristic. Therefore, a 35 U.S.C. 102/ 103 rejection is appropriate for these types of claims as well as for composition claims. Therefore the Examiner has met her burden of establishing the basis for this type of a rejection by showing that the composite of Veiga et al is both structurally and chemically the same and then shifted the burden to Applicant to refute that the composite of Veiga et al would not show the properties of leak down time or elongation at break.

In fact, Applicant has not met their burden of proof to show nonequivalence. Based upon the fact that the composition claimed and that shown by the cited art are identical in composition, is not refuted by Applicant. Just because the cited reference chooses not to test using these standards doesn't mean that it doesn't exist, and thus Applicant's standpoint does not overcome the reference. The references does not have to explicitly state Applicant's desired properties, it structurally and chemically must meet Applicant's claim limitations-which it does. Applicant's arguments or conclusions are not enough to overcome the cited art or to take the place of evidence. *In re Cole*, 51 CCPA 919, 326.

Therefore, these arguments are not found to be persuasive and this rejection is maintained.

5. With regard to the rejection made in paragraph 9 of the previous office action; Claims 1-17 being rejected under 102(e)/103(a) over MORIWAKI et al. USPN 5989660. Applicant's traversal over this rejection is that the coating used by Moriwaki is not the same as Applicant's film as it would not provide a uniform film. Please refer to paragraph 3 above for this rationale. Applicant once again traverses that thickness of the coating is denoted as average thickness, alluding one to believe that the coating is not uniform. As explained above with the post processing steps, neither is Applicant's. Therefore, this argument is not found to be persuasive and this rejection is maintained.

With regard to the rejection made in paragraphs 10-11 of the previous office action; Claims 1-17 being rejected under 103(a) over BREED et al USPN 5863068 in view of MORIWAKI et al. USPN 5989660. Applicant's traversal is that the reference of Breed et al does not teach a side curtain airbag or that the airbag is made from a fabric/film laminate. To this the Examiner rebuts that Breed et al teach making all shapes of airbags, which is driver side,

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passenger, knee and side curtain. In fact, Applicant is directed to Figure 8 where a side curtain airbag is shown. At column 9, line 5- column 10, line 42, the instant patent teaches that many types of airbags, that is film on film, film on fabric may be formed using the components described and refers to these airbags as hybrid airbags. Under 12. in column 9, they specifically teach any desired shape formed from flat panels-this is the definition of a side curtain airbag. Therefore, these arguments are not found to be persuasive and this rejection is maintained.

***Claim Rejections - 35 USC § 102***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 1-3, 8-11 and 16-17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 6239046 issued to VEIGA et al as set forth in the previous office action at paragraphs 7-8.

9. Claims 1-17 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over USPN 5989660 issued to MORIWAKI et al as set forth in the previous office action at paragraph 9.

10. Claims 1-17 are rejected 35 U.S.C. 103(a) as obvious over USPN 5863068 issued to Breed et al in view of USPN 5989660 issued to MORIWAKI et al as set forth in the previous office action at paragraphs 10-11.

***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ms. Arti Singh whose telephone number is 571-272-1483. The examiner can normally be reached on M-T 9-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Ms. Arti Singh  
Primary Examiner  
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